IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.486 of 2005
RANJIT KUMAR
Versus
1. KAMLESHWARI PD.KESHRI
2. Shambhu Pd. Keshr
3. Munna Keshri.

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11. 15.12.2008 Heard both sides.

The plaintiff/respondent filed Title Suit No.84 of 2004 for declaration that the plaintiff has right of pre-emption against defendant No.1/appellant and further that he is ready to pay the consideration amount as well as registration expenses to defendant No.1 for the suit land and prayer for temporary injunction restraining the defendant No.1 in making any construction over the suit land as well as disturbing the possession of plaintiff over portion of the suit land as common **Gali** running North to South.

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The case of the plaintiff/respondent was that the two plaintiffs and defendant No.2 were brothers and a partition was arrived at between the three brothers on 17.8.1996 under a deed of partition (Annexure-A) of that date. In the partition, the Northern portion was given to plaintiff No.2 and Southern portion was given to the plaintiff No.1 and middle portion was given to defendant No.2 and a **Gali** running North to South in front of shares of each brother was kept for common use of the brothers. It was an stipulation in the deed of the partition that in future if any of the brothers wanted to sale his land he would first offer the same to his other two brothers on market price at the time and incase the brothers refuse to purchase it, the same could be sold to any other person i.e. stranger to the family. The

plaintiff's case was further that one of the brothers i.e. defendant No.2 sold his share to defendant No.1 vide sale deed dated 31.3.2004 and on the basis of sale deed the defendant No.1 came upon the purchased land. But, further case of the plaintiff/respondent was that after coming into possession of the land, the defendant No.1/appellant started putting obstruction in the use of the common **Gali.** The plaintiff/respondent also claimed right of pre-emption stating that they were right to deposit the consideration money at which the defendant No.1 had purchased the land from defendant No.2. The plaintiff/respondent pleaded right of pre-emption as available to them under the stipulations in the deed of partition. The plaintiff/respondent also prayed for an injunction restraining the defendants from making any change in the physical features of the land and also disturbing the plaintiff/respondent from using common passage **Gali.** The leaned **c**ourt below being convinced with the prayer for injunction passed an order in favour of the plaintiff/respondent restraining the defendant No.1/appellant in making any change of the physical features of the suit land and also restraining him in making any interference with the use and possession of the plaintiff/respondent over the suit lands.

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The learned counsel for the appellant /defendant No.1 submitted that the plaintiff/respondent did not agree to purchase the land, therefore, the defendant No.2 sold the land to defendant No.1/appellant. In this context, the leaned counsel for the appellant submitted that the sale deed in favour of the defendant No.1 mentioned that no other person excepting defendant No.1 had expressed any willingness to purchase land on that price. But, the

learned counsel for the plaintiff/respondent submitted that there is no specific mentioned in the sale deed that the offer for selling was made to the two brothers i.e. the plaintiff/respondent.

Thus, hearing both sides, I find that in this case there is a prima facie case as well as balance of convenience in favour of granting injunction order as prayed for. Any question of irreparable loss to the appellant/defendant does not arise due to the passing of the restrain order as passed by the court below.

In such view of the matters, the court below was justified in passing the injunction order. The impugned order needs no interference.

The appeal is accordingly dismissed.

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Ravi/- **(C.M. Prasad, J.)**

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